

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**WENDELL TERRY NELSON,**

**Plaintiff,**

**VS.**

B. BARTON, et al.,

**Defendants.**

**CASE NO. CIV-12-08-HE**

## REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se* has filed this civil rights action pursuant to 42 U.S.C. §1983 alleging violations of his constitutional rights. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U. S. C. §636(b)(1)(B). In an order dated July 3, 2012, the undersigned noted that according to Plaintiff he had been transferred to a California state prison and was close to being released from incarceration. Plaintiff was therefore ordered to submit an amended application to proceed *in forma pauperis* on or before July 24, 2012, to enure that Plaintiff remains qualified for pauper status. *See Treff v. Galetka*, 74 F.3d 191, 197 (10<sup>th</sup> Cir. 1996).

A review of the Court file reveals that as of this date Plaintiff has not responded to this Court's order. He has not filed an amended application, shown good cause for his failure to do so, or requested an extension of time to comply with the order. The undersigned finds that Plaintiff's failure to comply with this Court's order together with the Court's right and responsibility to manage and control its case load, warrants dismissal of this action without

prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007) (sua sponte dismissal for failure to comply with Court's order permitted under federal rule, and court need not follow any particular procedures in dismissing action without prejudice for failure to comply).

### **RECOMMENDATION**

Therefore, it is the recommendation of the undersigned that Plaintiff's action be dismissed without prejudice to refiling. Any objection to this Report and Recommendation must be filed with the Clerk of this Court on or before the 20<sup>th</sup> day of August, 2012, in accordance with 28 U. S. C. §636 and Federal Rule of Civil Procedure 72. Failure to make a timely objection to this Report and Recommendation waives the right to appellate review of both the factual findings and the legal issues decided herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the Magistrate Judge in the captioned matter.

ENTERED this 31<sup>st</sup> day of July, 2012.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE